

From: Karl Vogel
To: Microsoft ATR
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Subject: Microsoft Settlement

Attn: Renata B. Hesse
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U.S. Department of Justice
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Greetings:

The proposed Microsoft settlement language lets the company off far too easily. If the deal goes through without modification, I believe Microsoft will actually become stronger and better able to act as an industry monopoly.

As I understand the proposed final judgment, remedies specifically protect organizations in business for profit. This is fine as far as it goes, but Microsoft's greatest current threats come from the non-commercial arena: Linux-based systems on the operating system front, the Apache webserver on the IIS-alternative front, and the Gnome and KDE GUI packages on the desktop front. These three competitors are all not-for-profit in nature, and not-for-profit organizations seem to have no rights at all under the proposed settlement.

Section III(J)(2) says that it need not describe nor license API, Documentation, or Communications Protocols affecting authentication and authorization to companies that don't meet Microsoft's criteria as a business:

"...(c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, ..."

In other words, Microsoft can now effectively kill any not-for-profit product which makes use of Microsoft protocols, which doesn't amount to much in the way of punishment for precisely that sort of past behavior.

The biggest loser in this settlement would seem to be the U.S. government, as it also doesn't qualify as a for-profit organization. This includes your office, the military, and anyone else working for the government who might benefit from some real competition.

Finally, nothing in this proposal would prevent a future Microsoft monopoly based on .NET and HailStorm.

Recommendations:

- * People should be able to create independent implementations of Microsoft APIs without fear of legal retaliation. This is the only way that other organizations can hope to make their products work and play nicely together with MS products on an MS desktop.
- * Instead of auctioning the right to port Office to specific systems, or forcing them to give up code for IIS, simply require that MS Office work properly when installed and run under the "Wine" emulator for Intel-based systems. This prevents MS from making a product dependent on undocumented Windows features, without hobbling them or making them give up their corporate crown jewels.

<http://www.kegel.com/remedy.html> holds more specific language changes for the proposed final judgment.

Please rethink this. You can get a very clear picture of a company just by watching what they're willing to do to get the last 5% of a market. If Microsoft had been willing to settle for 85% of the desktop, do you think this trial would have happened in the first place? Winning is one thing, but winning by any means necessary is another.

Thank you for your time.

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